
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-02-NY-236
Cablevision Systems of New York City Corporation)	
)	NAL/Acct. No. 200332380016
Bethpage, NY)	
)	FRN: 0004-5055-66

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 14, 2003

By the District Director, New York Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Cablevision Systems of New York City Corporation ("Cablevision") has apparently violated Sections 11.61(a)(1)(iii), 11.61(a)(2)(i)(B), and 11.61(b) of the Commission's Rules (the "Rules"),¹ by failing to conduct required monthly and weekly tests of the Emergency Alert System ("EAS") and failing to maintain station records of required monthly and weekly EAS tests messages. We conclude that Cablevision is apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000).

II. BACKGROUND

2. On October 17, 2002, Commission agents conducted an EAS inspection of Cablevision's head end location at 9502 Avenue D, Brooklyn, NY 11236. Based upon the agents' inspection of Cablevision's station records, they determined that Cablevision failed to conduct required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code for the months of July 2002 and August 2002, and failed to conduct required weekly tests of the EAS header and EOM codes from July 1, 2002 to September 7, 2002, and for the week of September 15-21, 2002. They also found that Cablevision had failed to maintain station records of required monthly and weekly EAS tests received for the months of July 2002 and August 2002, and weeks of July 1, 2002 through September 14, 2002, and state reasons why EAS tests were not received.

3. On October 25, 2002, the New York Office sent a Notice of Violation for failure to conduct and receive required monthly and weekly EAS tests, and failure to have installed an operational EAS system, by First Class and Certified Mail Return Receipt Requested, to Cablevision.

¹ 47 C.F.R. §§ 11.61(a)(1)(iii), 11.61(a)(2)(i)(B) and 11.61(b)

4. On November 18, 2002, the New York Office received a reply to the Notice of Violation from Paul W. Jamieson, counsel for Cablevision, acknowledging that Cablevision failed to receive monthly and weekly tests for the time periods in question.

III. DISCUSSION

5. Section 11.61(a)(1)(iii) of the Commission's Rules requires cable systems to conduct monthly tests of the EAS header codes, Attention Signal, Test Script and EOM code that conforms to procedures in the EAS Operating Handbook and Section 11.61(a)(1)(v)². Cablevision's station records failed to show that required EAS monthly tests were conducted in July 2002 and August 2002

6. Section 11.61(a)(2)(i)(B) of the Rules requires cable systems to conduct weekly tests of the EAS header and EOM codes at least once a week at random days and times. Cablevision's station records failed to show that required weekly tests were conducted from July 1, 2002 to September 7, 2002, and for the week of September 15-21, 2002

7. Section 11.61(b) of the Commission's Rules requires cable stations to make entries in station records of weekly and monthly EAS tests received. There were no entries in the station records indicating reasons why monthly and weekly EAS tests were not received.

8. Based on the evidence before us, we find that Cablevision willfully³ and repeatedly⁴ violated Sections 11.61(a)(1)(iii), 11.61(a)(2)(i)(B), and 11.61(b) of the Rules by failing to conduct required monthly tests of the EAS header codes, Attention Signal, Test Script, and EOM code for the months of July 2002 and August 2002, by failing to conduct required weekly tests of the EAS header and EOM codes from July 1 to September 7, 2002, and September 15-21, 2002, and by failing to log entries indicating reasons why required monthly EAS tests were not received for the months of July 2002 and August, 2002, and weekly EAS tests were not received from July 1, 2002 to September 14, 2002.

9. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁵, sets the base forfeiture amount for failure to make required

² 47 C.F.R. § 11.61(a)(1)(v).

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁵ 47 C.F.R. § 1.80.

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measurements or conduct required monitoring at \$2,000, and base forfeiture for failure to maintain required records at \$1,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,⁶ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a three thousand dollar (\$3,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended,⁷ (“Act”) and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Cablevision is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willful and repeated violations of Sections 11.61(a)(1)(iii), 11.61(a)(2)(i)(B), and 11.61(b) of the Commission’s Rules.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Cablevision SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332380016 and FRN: 0004-5055-66.

13. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332380016.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

⁶ 47 U.S.C § 503(b)(2)(D)

⁷ 47 U.S.C. § 503(b)

⁸ 47 C.F.R. §§ 0.111, and 0.311.

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15. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Cablevision Systems of New York City Corporation, 1111 Stewart Avenue, Bethpage, NY 11714-3581 and a copy to Piper Rudnick, 1200 Nineteenth Street, N.W. Washington, D.C. 20036-2412.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

Attachment A – FCC List of Small Entities, October 2002

⁹ See 47 C.F.R. § 1.1914.